IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 12 OF 2005

1) Sriram Narhar Kulkarni,

2) Sau. Lata Sriram Kulkarni ... Applicants

versus

The State of Maharashtra ... Respondent

...

Mr. A.P.Mundargi, with Mr. Mandar Goswami, for the Applicants.

Mr. S.R. Shinde, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

13th January 2005

P.C.:

. Heard Counsel for the parties. Insofar as Applicant No. 2 is concerned, the only allegation against the Applicant No. 2 is regarding the irregularity in respect of grant of loan to Datar Switchgear Co. Ltd. It is seen from the record that the Applicant No. 2, who is the Loan Officer of the Bank, had submitted report to the Board of Directors, who, in turn,

have approved the loan facility to be extended to said Datar Switchgear Co. Ltd. If it is so, the Applicant No. 2 cannot be made responsible for the steps taken in processing the loan application preferred by the said Company. As no other allegation has been made as against Applicant No. 2, I am inclined to grant anticipatory bail to Applicant No. 2 on the terms mentioned hereinafter.

. Insofar as Applicant No. 1 is concerned, besides loan facility extended to Datar Switchgear Co.Ltd., the F.I.R. as filed refers to various other transactions. Mr. Shinde, A.P.P., was called upon to produce material to support the position that necessary investigation into those aspects has been made and there is material on record to indicate complicity of the Applicant No.1 in relation to the alleged offence. Mr. Shinde states on instructions of the officer, who is present in Court, that investigation has been done, but no material has been brought to the Court, which can be produced for the perusal of the Court. This cannot be countenanced. Enough time was spent for hearing of this matter and the difficulty is expressed

only at the end of the hearing of the application. As no material has been shown to the Court so as to satisfy the Court that arrest of the Applicant No.1 is essential in relation to the alleged offence, it is not possible to keep the liberty of the Applicant No.1 at the discretion of the investigating officer. It is well-settled that only after the investigating officer is satisfied on the basis of necessary inquiry made after institution of the F.I.R. about sufficient material to indicate complicity of the accused in the commission of the crime, would he be justified in arresting the concerned accused. In the circumstances, the only option at this stage is to allow the application of Applicant No. 1 by directing the investigating officer to give 72 hours' notice before his intention to arrest, in the event sufficient material becomes available to him to justify that action. Accordingly, this application is disposed of by the following order.

(A) Applicant No. 2 is granted anticipatory bail in connection with offence registered vide CR.No.345/2004 with Sarkarwada Police Station on

executing personal bond in the sum of Rs.1,00,000/- (Rupees one lakh) only with one or four local sureties in the like amount.

(B) The Applicant No. 2 shall abide by the conditions stipulated in section 438(2) of the Code of Criminal Procedure as applicable to the State of Maharashtra.

(C) Insofar as Applicant No. 1 is concerned, the investigating officer is directed to give 72 hours' advance notice to the said Applicant No.1 before he decides to arrest the said Applicant, so as to enable the said Applicant to take recourse to remedy as may be permissible by law.

. Application disposed of on the above terms.

. Copy of this order be forwarded to the Principal Secretary, Home Department, as well as Secretary, Law and Judiciary Department, as I

have expressed displeasure about the manner in which the investigating officer has come to assist the Public Prosecutor and the assistance offered to the Court by the Public Prosecutor.